THE HON'BLE SRI JUSTICE RAMESH

RANGANATHAN

W.P.No. 20530 OF 1996

Date: 01.02.2007

Between:

K. Perredy.

... Petitioner

and

The Life Insurance Corporation of India, rep., by its Chairman, Jeevan Bheema Marg, Bombay and two others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH

RANGANATHAN

W.P.No. 20530 OF 1996

ORDER:

By order dated 02.02.1995 the Divisional Manager of the Life Insurance Corporation, on finding the explanation submitted by the petitioner to their letter dated 15.12.1994 as not being satisfactory, terminated the agency under Rule 16(1)(b) of the Agent's Rules 1972 for having willfully acted in a manner prejudicial to the interests of the Corporation.

The petitioner was appointed as an agent in August 1992. He canvassed the benefits of Life Insurance policy to one Sri Venkata Reddy of Ravulapalem Mandal in East Godavari District and obtained a policy for Rs.25,000/-. According to the petitioner, he enquired about the health and financial status of the assured in his native village and, as he did not receive any adverse information with regards his health or wealth and since the policy proposed to be obtained by Sri Venkata Reddy was a non-medical policy for which no medical examination was required, he took out the life insurance policy. According to the petitioner, on physical verification as well as on enquiry in the village, he was satisfied with the health condition of the life assured and had submitted proposals to the Corporation for issue of such policy to Sri Venkata Reddy. On 24.08.1992 Sri Venkata Reddy

died of heart attack. The corporation is said to have caused an enquiry into the death of the life assured and to have found that he was suffering with fever, rashes with skin modules all over the body for four months prior to the date of the proposal and that the disease which the life assured was suffering from was diagnosed as Kaposis sarcoma. A show cause notice was issued to the petitioner on 22.02.1994 calling upon him to submit his explanation as to why the agency could not be terminated. The petitioner submitted his explanation and, vide proceedings dated 02.02.1995, the agency was terminated. The petitioner preferred an appeal to the third respondent on 18.07.1995 who confirmed the impugned order of termination. The petitioner would refer to the fact that at the time of his heart attack the life assured was treated by Dr. V. Sayanarayana Reddy, one of the panel doctors of the Corporation, who had issued a medical certificate on 18.10.1992 informing the Corporation that the life assured had died due to heart pain and that he was not suffering with any other disease prior to his death. The petitioner would contend that termination of his agency is contrary to the statutory regulation and is arbitrary and illegal.

In the counter affidavit filed on behalf of the respondent Corporation it is stated that the life assured had died within a few days of issue of the policy on 24.08.1992 and, in view of the policy resulting in an

early claim, the corporation had investigated the matter and, on investigation, it was established that the life assured had been suffering from fever, rash with skin modules all over the body prior to the proposal and that the disease was diagnosed as Kaposis Sarcomo i.e., a kind of malignant tumor of connected tissues and that the disease was visible to the naked eye. It is stated that the petitioner, in his confidential reports, had submitted that the proponent was hale and healthy. Respondents would state that the position of an Agent is a matter of trust and that the Corporation relies on the reports submitted by Agents regarding the health of the proponent and, since there was a breach of trust, the agent could not expect the Corporation to continue him as their Agent. It is stated that reasonable opportunity was given to the petitioner before his agency was terminated. Reference is made to the fact that, under Regulation 8, the petitioner is expected to make discreet enquiries with regard to the lives to be insured before recommending proposals for acceptance and that he was required to bring to the notice of the Corporation any circumstance which may adversely affect the risk to be underwritten. It is stated that the agent had failed to make any such enquiry into the health condition of the proponent and had failed and had neglected his duty as an agent. It is stated that the petitioner had admitted that he

introduced the proposal through the help of a friend and that an agent should have made reasonable enquiries. Reference is made to Regulation 16(1)(b) which empowers the Corporation to terminate the services of an agent if he acts in a manner prejudicial to the interests of the Corporation. It is also stated that, in so far as the agent is concerned, the agency was always terminable by one month's notice on either side. It is stated that the petitioner cannot compare his case with other agents and that each case depends on the facts and circumstances of the said case.

While Sri Y.V. Ravi Prasad, learned Counsel for the petitioner, would contend that, since the policy is a non-medical claim, the agent is not required to have the assured medically examined before submitting a proposal insuring his life and since the petitioner had made reasonable enquiries and was reasonably satisfied that the accused was hale and healthy, he had submitted the proposal. Learned Counsel would point out that while the Corporation had stated that the petitioner was suffering from fever, rashes and skin modules all over his body, none of these had resulted in the death of the assured, who had died of a heart attack. Learned Counsel would submit that it is also not in dispute that in the case of a non-medical claim no medical examination need be conducted before the life of the person is insured and as such termination of

the agency, being contrary to the statutory regulation, was required to be declared illegal. Learned Counsel would submit that, while the petitioner was permitted to carry on life insurance business till the agency was terminated in February 1995 he was not paid any commission from the date of his appointment as an agent in 1992 till his agency was terminated in February 1995.

Sri M.V. Suresh, learned Standing Counsel appearing on behalf of the Life Insurance Corporation, would submit that an agent cannot claim parity in status to that of an employee and since the regulations merely require a notice to be given before termination of the agency and, in as much as the petitioner's conduct had led the Corporation to believe that continuing the agency was not in its interests, the Corporation was justified in terminating the agency. Learned Counsel would submit that, while the petitioner had certified that the person whose life was insured was hale and healthy, the fact remained that even four months prior to the date on which the proposal was submitted the assured was suffering from skin ailments and other diseases which the petitioner ought to have reasonably enquired into. Learned Counsel would refer to Regulation 8(1)(b) which requires the agent to make all reasonable inquiries in regard to the life of the insured and submit that

Regulation 16(1)(a) empowers the competent authority to terminate the agency, if the agent failed to discharge his functions, as set out in regulation 8, or under clause (b) of Regulation 16(1), if he acted in a manner prejudicial to the interests of the Corporation. Learned Counsel would also point out that under Regulation 17 it is always open to the Corporation to terminate the agency by giving one month's notice thereof in writing. He would submit that no relief has been claimed in the writ petition for payment of commission and as such these were not matters which could be gone into in proceedings under Article 226 of the Constitution of India.

It is necessary to note that the Agent's Regulations 1972, made in exercise of the powers conferred under Section 49 of the Life Insurance Corporation Act, are statutory regulations. Regulation 3(b) defines an agent to mean a person appointed under regulation 4 of the regulations. Regulation 4 relates to appointment of an Agent. Regulation 8 prescribes the functions of an Agent and under sub-regulation 2(b) thereof, in procuring new life insurance business, an agent shall make all reasonable enquiries in regard to the lives to be insured before recommending proposals for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten. Regulation 13

relates to termination of agency and Regulation 16 provides for termination of agency for certain lapses. Under sub-regulation 1(a) and (b) thereof the competent authority may by order determine the appointment of an agent if he has failed to discharge his functions set out in regulation 8 to the satisfaction of the competent authority or if he acts in a manner prejudicial to the interests of the Corporation. Regulation 17(1) empowers the appointment of an agent to be terminated by the competent authority at any time by giving one month's notice thereof in writing. Regulation 19 relates to payment of commission on discontinuance of agency and under sub-regulation 1 thereof, in the event of termination of the appointment of an agent, except for fraud, the commission on the premiums received in respect of the business secured by him shall be paid to the agent. It is necessary to note that the impugned order terminating the agency is said to be under regulation 16(1)(b) which provides that an agency may be terminated if the agent acts in a manner prejudicial to the interests of the Corporation. Since Sri M.V. Suresh, learned Standing Counsel would place reliance on sub-regulation (a), it is appropriate that the question as to whether the agency was liable to be terminated under clause (a) also be examined.

The question which arises for consideration is as

to whether the petitioner can be said to have failed to discharge his functions as set out in Regulation 8. As noted above Regulation 8(2)(b) requires an agent to make all reasonable enquiries in regard to the lives to be insured before recommending proposals for acceptance, and bring to the notice of the Corporation **any circumstance which may adversely affect the risk to be underwritten**. (emphasis supplied). The reasonable enquiries which an agent is required to make is with regards the life of the insured or any circumstance which may adversely affect the risk to be underwritten. In the present case the risk underwritten was the life of the assured and accordingly, under Regulation 8(2)(b), an agent was required to make reasonable enquiries as to whether there were any circumstances which would adversely affect the life of the assured. It is not denied in the counter-affidavit, and is fairly conceded by Sri M.V. Suresh, learned Standing Counsel, that since the policy is a non-medical claim the assured was not required to be subjected to medical examination. Even according to the respondents in their counter-affidavit, the life assured was suffering from fever, rashes and skin modules all over his body. None of these are life threatening or constitute circumstances which may adversely affect the life of the assured which was the risk under written. It is further stated in the counter-

affidavit that the disease was diagnosed as Kaposis sarcoma i.e., a kind of malignant tumor of the connected tissues. Since, admittedly, the agent was not required to subject the assured to medical examination, this disease could certainly not have been reasonably enquired into without subjecting the assured to a medical examination. Regulation 8(2)(b) cannot be said to have been violated in the present case. The other ground on which the impugned order is sought to be sustained is that the petitioner had failed to make enquiry into the health condition of the proponent and on his own admission had introduced the proposal through the help of a friend. From the admission of the petitioner that he had introduced the proposal with the help of a friend, no inference can be drawn that he did not make any reasonable enquiries with regards the health condition of the accused. In the affidavit filed in support of the writ petition the petitioner states that he made enquiries in the village which fact is not disputed in the counter-affidavit. Nothing has been stated in the counter-affidavit as to how the petitioner had acted in a manner prejudicial to the interests of the Corporation. Since neither the impugned order nor the averments in the counter-affidavit would bring the petitioner's action within the ambit of Regulation 16(1)(a)&(b), termination of the petitioner's agency for certain alleged lapses was

contrary to the statutory regulations and is liable to be set aside.

While Sri M.V. Suresh, learned Standing Counsel, would point out that the respondent Corporation has, nevertheless power to terminate the agency by giving notice of one month, the impugned order of termination is for alleged lapses and has been passed in exercise of the powers conferred under Regulation 16 and not Regulation 17 and as such the impugned order of termination cannot be sustained under Regulation 17. Needless to state that the order now passed by this Court, quashing the impugned order of termination, shall not preclude the respondents, if they so choose, from exercising the powers conferred under Regulation 17 to terminate the agency by notice.

With regards the contention of Sri Y.V. Ravi Prasad, learned Counsel for the petitioner, that the petitioner has not been paid commission for the period 1992 to 1995, as has been rightly point out by Sri M.V. Suresh, learned Standing Counsel, no such relief has been claimed in the writ petition. On a query from this Court as to which of the Regulations relates to payment of commission, Sri M.V. Suresh, learned Standing Counsel would fairly point out Regulation 19 whereunder sub-regulation 1 provides that in the event of termination of the appointment of an agent, except for fraud, commission on the premium received in

respect of the business secured by an agent shall be paid to him. It is not even the case of the Corporation that the agency was terminated on grounds of fraud. Ends of justice would be met if the petitioner is permitted to submit a detailed representation to the second respondent for payment of commission under Regulation 19(1). Sri Y.V. Ravi Prasad, learned Counsel for the petitioner, would submit that such a representation would be filed within four weeks from the date of receipt of a copy of the order. In case such a representation is filed within the aforesaid period, the second respondent shall consider the same in accordance with the regulations and take necessary action thereupon in accordance with law within a period of three months thereafter.

The writ petition is allowed. The impugned order of termination is quashed. However, in the circumstances, without costs.

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Date: 01.02.2007 RAMESH RANGANATHAN, J

MRKR